Cur. Adv. Vult.

The judgment of the Court was delivered by :—

Mathew, C.J. : — The appellant was charged with murder contrary to s. 302 Penal Code, and was convicted of culpable homicide not amounting to murder contrary to s. 304 Penal Code after the learned trial judge had considered the answers to certain questions on relevant issues of fact put by him to the assessors. Mr. Rajasooria's main ground of appeal is as follows :—

"The appellant contends that His Lordship the trial judge erred in law in the course of his summing up to the assessors he failed to direct them of their right to find him guilty of lesser offence other than murder and culpable homicide to wit: causing death by negligence under sections 304A Penal Code and sections 336, 337, 338 and 325 Penal Code. His Lordship misdirected the assessors by stating that the fracture of ribs necessarily caused death."

In our view, the first part of this ground of appeal is misconceived. The function of the assessors is to give their opinions and their reasons therefor on such particular issues of fact relevant to the charge as the Court may specify. It is not part of their functions to give their opinions as to what offence (if any) the accused is guilty of. This is the function of the judge who, after considering the opinions of the assessors, delivers judgment and convicts or acquits the accused. The learned trial judge put certain issues of fact to the assessors and in the course of his judgment considered their opinions.

Mr. Rajasooria complains, in the second part of this ground of appeal that the learned trial judge misdirected the assessors. The question put to the assessors was : — "Are you satisfied that the inflicting of that series of heavy blows was likely to cause death?" We can find no passage in the summing up in which the learned judge states that the fracture of the ribs necessarily caused death. The matter was put quite clearly to the assessors, and they were asked :— "Was that series of injuries considered as a whole likely to cause death?" To this question the first assessor answered "no", and the second assessor said that he did not think so. The learned trial judge disagreed with the opinions of the assessors on this issue of fact and dealt with it in his judgment as follows :—

"On this issue I dissent from the opinions of the assessors. It is purely a question of fact. I am well aware that it is a matter of experience that the human frame can sustain the most appalling injuries without death ensuing. Nevertheless, having considered the evidence of the doctor, I am satisfied in my mind that not considering any one blow or set of blows in isolation but considering the series of blows as a whole that did amount to an act that was likely to cause death."

In our view, no exception could be taken to the summing up or to the judgment, and the appeal was accordingly dismissed.

Appeal dismissed.

Solicitor for the appellant: *R. P. S. Rajasooria.*

LOW AH TOW v. YUSOF BIN KAYAB.

[C. A. (Murray-Aynsley C.J., Mathew C.J. (F.M.), and Brown J.) April 15, 1954]

[Singapore — Civil Appeal No. 30 of 1953]

Damages — Personal injuries arising from negligence — Quantum — Principle of assessment.

The respondent claimed for damages for personal injuries caused by the negligence of the appellant. This appeal concerned the quantum of damages only. The respondent was 23 years of age and was employed as a lorry driver at $120 p.m. He remained in hospital for three months and continued to go there twice a week for about six months. He used crutches for about three months after leaving hospital and according to the doctor's opinion he would have a permanent disability of his leg.

The learned trial Judge awarded the respondent $24,000 general damages.

Held: there are three elements to be considered in assessing general damages: (a) pain and suffering; (b) loss of future earnings; (c) the disadvantage arising from disablement apart from loss of earning power. While element (b) is related to probable earnings of the injured person, elements (a) and (c) are not so related and are the same regardless of his financial position. Wages here are lower than in England and damages relative to loss of earnings will naturally be generally less here than in England.

It was clear that the respondent must have suffered considerable pain and suffering and $5,000 would not be an excessive award. Although it is difficult to assess loss of future earnings an award of $9,000 in this case would be justified. As regards the third item an award of $10,000 would not be excessive.

DAMAGES.

J. C. Cobbett for the appellant.

D. H. Murphy for the respondent.

Cur. Adv. Vult.

Murray-Aynsley, C.J. [with whom Mathew, C.J. (F.M.) and Brown, J. concurred] : — The appeal concerned damages only. The respondent was at the time of the accident employed as a lorry driver by the Municipality at $120 per month. The injuries received by him were serious and permanent. At the trial the learned Judge awarded $24,000 as general damages. Against this the defendant appeals. In assessing general damages there are three elements to be considered; (a) pain and suffering; (b) loss of future earnings; (c) the disadvantage arising from disablement apart from loss of earning power. Under the first heading I think that a substantial sum should be awarded. The

accident took place on September 24, 1952. His injuries were :—

(a) Fracture of right half of pelvis;
(b) Fracture of right medial malleolus;
(c) Chip fracture of head right fibula;
(d) Paralysis of right lateral popliteal nerve resulting in foot drop;

The paralysis of the muscles supplied by the anterior popliteal nerve is permanent.

There is a weakness of all movements of the right leg and wasting of the muscles of the thigh and calf. In addition there is no dorsiflexion movement of the right foot resulting from the paralysis of the anterior tibial nerve. This disability is permanent.

The respondent remained 3 months in hospital and continued to go there twice a week until the following June. He used crutches for about three months after leaving hospital. His present condition is, in the words of Dr. Wilson :—

"Examined plaintiff on 5th February. He had a dropped foot. Could not say then that it would be permanent. He has also a stiff right hip joint. I advised him to go on with his electrical treatment at the hospital.

"In August I saw him again. There was no improvement at all and I am of opinion that the injury is permanent. Plaintiff will never be able to walk properly up or down a slope. He will have to remove his support whenever, e.g. he has a bath or shower. He can it is true, drive a car now. He should not suffer any more pain.

"I should say that he has a permanent partial disability of his leg. The stiffness of his hip joint should have gone by now — nevertheless it has not. I don't know what this condition may be in say 20 years. It may get worse. He is only a young man. It is perhaps worse psychologically to have an amputated foot."

It is clear that he must have suffered considerable pain. I think that $5,000 would not be an excessive award for this element.

This second element is difficult to assess. The respondent was earning rather high wages by reason of being able to follow a skilled occupation. He has not been able to obtain such employment since his accident and though it is physically possible for him to drive a car it is probable that he will always have greater difficulty in obtaining employment than he would otherwise. He will probably earn less at the best of times and he is more likely to be unemployed during difficult times. Counsel for the appellants suggested that he should be treated as having lost about one-third of his earning capacity. This form of assessment on a percentage basis is never entirely satisfactory. In many occupations a very slight injury means a total and permanent loss of employment. A professional cricketer who loses a finger will probably become useless as a cricketer. A solicitor who lost both legs might not suffer loss of earnings at all. Generally when a person gains his livelihood by some kind of manual dexterity, and suffers an injury which diminishes that dexterity, it is usually necessary for him to take up some other occupation and it is notoriously difficult for a manual worker to change to any other form of occupation except the least skilled and the worst paid. If the respondent cannot get work as a lorry driver it is difficult to see what he could do. In the Court below the appellant suggested poultry farming. But that requires a great deal of knowledge and skill to be carried on with success. And it is highly doubtful whether he could be made into a successful poultry farmer. His injuries would almost certainly disqualify him for hard manual labour. It is speculative whether he could make a living as a shopkeeper even if given the capital to set himself as such. Even on the basis suggested by the appellant's counsel an award of $9,000 would be justified.

As regards the third item, the respondent is a young man of 23 years who has suffered permament injuries which will prevent him from indulging in any form of sport and even from walking properly. I do not think that $10,000 would be excessive for this element. While element (b) is related to probable earnings of the injured person, elements (a) and (c) are not so related and are I take it the same regardless of his financial position. Wages here are lower than in England and damages relative to loss of earnings will naturally be generally less here than in England. In these cases I do not think that any guidance can be drawn from other cases unless these are fully reported. A summary which does not give all the facts is of no value. Where damages are at large I think that it is impossible to fix a scale and undesirable to try to do so. An analogous problem arises with regard to sentences. Courts will not look at what was done in other cases when reviewing sentences. I think they are right.

Taking the present case as a whole I consider that the damages in the present case are on the high side. I might have given rather less myself but I do not consider that there is adequate ground for nterference by this Court.

Appeal dismissed.

Solicitors for the appellant: *Rodyk & Davidson.*
Solicitors for the respondent: *Hilborne & Murphy.*

SUCCESSORS OF MOINE COMTE & CO. LTD. v. EAST ASIATIC CO. LTD. & SINGAPORE HARBOUR BOARD.

[O. C. J. (Knight, J.) April 23, 1954]

[Singapore — Suit No. 1693 of 1954]

Carriage of Goods by sea — Claim for damages for breach of contract of carriage alternatively of Art.